

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9 VAC 5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

Part I.
Permits for New and Modified Sources.

- 9 VAC 5-80-10. Permits - new and modified stationary sources.
- 9 VAC 5-80-11. Stationary source permit exemption levels.

9 VAC 5-80-10. Permits - new and modified stationary sources.

A. Applicability.

1. Except as provided in subsection A 3 of this section, the provisions of this section apply to the construction, reconstruction, relocation or modification of any stationary source.
2. The provisions of this section apply throughout the Commonwealth of Virginia.
3. The provisions of this section do not apply to any facility exempted by 9 VAC 5-80-11. Exemption from the requirement to obtain a permit under this section shall not relieve any owner of the responsibility to comply with any other applicable provisions of these regulations or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any facility which is exempt from the provisions of this section based on the criteria in 9 VAC 5-80-11 but which exceeds the applicability thresholds for any emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) if it were an existing source or any standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).
4. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.
5. Unless specified otherwise, the provisions of this section are

applicable to various sources as follows:

a. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter or 9 VAC 5-80-30.

b. Provisions referring to "major stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources.

c. In cases where the provisions of Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter or 9 VAC 5-80-30 conflict with those of this section, the provisions of Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter or 9 VAC 5-80-30 shall prevail.

B. Definitions.

1. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection B 3 of this section.

2. As used in this section, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

3. Terms defined.

"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

- (1) Applicable emission standards;
- (2) The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and
- (3) Any other applicable emission limitation, including those with a future compliance date.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of

permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable facility, this term refers to the delivery of any portion of the portable facility to the site.

"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

(1) Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Major modification" means any modification defined as such in 9 VAC Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter or 9 VAC 5-80-30, as may apply.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.

"Modification" means any physical change in, change in the method of operation of, or addition to, an emissions unit which increases the uncontrolled emission rate of any air pollutant emitted into the atmosphere by the unit or which results in the emission of any air pollutant into the atmosphere not previously emitted, except that

the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

(1) Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of reconstruction;

(2) An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;

(3) An increase in the hours of operation;

(4) Use of an alternative fuel or raw material if, prior to the date any provision of these regulations becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications; or

(5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the board considers to be less efficient.

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the State Implementation Plan.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application

information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction"

(1) Means the replacement of an emissions unit or its components to such an extent that:

(a) The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit, and

(b) It is technologically and economically feasible to meet the applicable emission standards prescribed under these regulations.

(2) Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

(b) The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

(c) The extent to which the components being replaced cause or contribute to the emissions from the unit; and

(d) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this section, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollutant control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

C. General.

1. No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:

a. Any stationary source; or

b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.

2. No owner or other person shall relocate any emissions unit subject to the provisions of 9 VAC 5-20-160 without first obtaining from the board a permit to relocate the unit.

3. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility subject to the provisions of 9 VAC 5-20-160 without first obtaining a permit from the board.

4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, and 9 VAC 5-80-30 into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, and 9 VAC 5-80-30 be combined into one application.

D. Applications.

1. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

2. For projects with phased development, a single application should be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

(1) The president, secretary, treasurer, or a vice president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a

responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

4. Any person signing a document under subsection D 3 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

E. Information required.

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources; and

b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

F. Action on permit application.

1. Within 30 days after receipt of an application, the board shall notify

the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of this chapter are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection F 2 of this section shall be the date on which the board received all required information.

2. Processing time for a permit is normally 90 days following receipt of a complete application. Processing steps normally are as follows:

a. Completion of the preliminary review and analysis in accordance with subsection I of this section and the preliminary decision of the board. This step may constitute the final step if the provisions of subsection G of this section concerning public participation are not applicable;

b. When required, completion of the public participation requirements in subsection G of this section; and

c. Completion of the final review and analysis and the final decision of the board.

3. The board normally will take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with subsection J of this section.

4. The applicant may appeal the decision pursuant to 9 VAC 5-20-90.

5. Within 5 days after notification to the applicant pursuant to subsection F 3 of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in subsection G 5 a of this section.

G. Public participation.

1. No later than 15 days after receiving the initial determination notification required under subsection F 1 of this section, the applicant for a permit for a major stationary source or a major modification with a net emissions increase of 100 tons per year of any single pollutant shall notify the public of the proposed source as required

in subsection G 2 of this section.

2. The public notice required under this subsection shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

- a. The source name, location, and type;
- b. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;
- c. The control technology proposed to be used at the time of the publication of the notice; and
- d. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

3. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection G 2 of this section.

4. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection G 5 of this section.

a. Applications for stationary sources of hazardous air pollutants as specified in subsection C 1 b of this section.

b. Applications for major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.

c. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:

- (1) Whether the project is opposed by any person;
- (2) Whether the project has resulted in adverse media;
- (3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

(4) Whether the project has generated adverse comment by a local official, governing body or advisory board.

d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.

5. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subsection G 5 a of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

a. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

H. Standards for granting permits.

No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.);

2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

3. Stack evaluation reductions under 9 VAC 5-80-10 C 3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without

causing or exacerbating a violation of any applicable ambient air quality standard.

I. Application review and analysis.

No permit shall be granted pursuant to this section unless compliance with the standards in subsection H of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Stationary sources.

a. Applications for stationary sources shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

b. Applications shall be subject to an air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Stationary sources of hazardous air pollutants.

Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

3. Stack elevation reductions under 9 VAC 5-80-10 C 3.

Applications under 9 VAC 5-80-10 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.

J. Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in subdivision 2 of this subsection, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

3. Testing required by subsections J 1 and 2 of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial

startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60, the requirements of subsections J 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in subsection J 4 of this section, the requirements of subsection J 1 through 3 of this section shall be met unless the board:

- a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
- b. Approves the use of an equivalent method;
- c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
- d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
- e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subsection J 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

K. Permit invalidation, revocation and enforcement.

1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

- a. Eighteen months from the date the permit is granted;
- b. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any governmental entity; or

c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section).

2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. The board may extend the periods prescribed in subsections K 1 and 2 of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of subsection G of this section.

4. Any owner who constructs or operates a new or modified source not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this section who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this subsection.

5. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

6. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments to it;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection K 6 of this section or for any other violations of these regulations.

8. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

L. Existence of permit no defense.

The existence of a permit under this section shall not constitute defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

M. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these Regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

N. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N 2 through N 4 of this section or 9 VAC 5-80-40 P 5.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision

shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.

O. Transfer of permits.

1. No persons shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this section by 9 VAC 5-80-11.

P. Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

9 VAC 5-80-11. Stationary source permit exemption levels.

A. General.

1. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10, the provisions of subsections B through H of this section are independent from the provisions of subsection I of this section. A facility must be determined to be exempt both under the provisions of subsections B through H taken as a group and under the provisions of subsection I to be exempt from 9 VAC 5-80-10.

2. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10 under the provisions of subsections B and C of this section, the definitions in the rule in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

B. New source exemption levels by size.

Facilities as specified below shall be exempt from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.

1. Fuel burning equipment.

a. Any unit using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

b. Any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

c. Any unit using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

d. Any unit using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour, unless subject to a new source performance standard in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

e. Any unit that powers a mobile source but is removed for maintenance or repair and testing.

2. Solvent metal cleaning operations.

Any solvent metal cleaning operation with an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

3. Volatile organic compound storage and transfer operations.

Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations.

(1) Any tank of 2,000 gallons or less storage capacity.

(2) Any operation outside the volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

b. Volatile organic compound storage operations.

Any tank of 40,000 gallons or less storage capacity.

4. Large appliance coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

5. Magnet wire coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

6. Automobile and light duty truck coating application systems.

a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

b. Any vehicle refinishing operation.

7. Can coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

8. Metal coil coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

9. Paper and fabric coating application system.

Any coating application system if it is within a plant that has an uncontrolled

emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

10. Vinyl coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

11. Metal furniture coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

12. Miscellaneous metal parts and products coating application systems.

a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

b. Any vehicle customizing coating operation, if production is less than 20 vehicles per day.

c. Any vehicle refinishing operation.

d. Any fully assembled aircraft or marine vessel exterior coating operation.

13. Flatwood paneling coating application systems.

Any coating application system if it is within in a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

14. Graphic arts (printing processes).

Any printing process if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

15. Petroleum liquid storage and transfer operations.

Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5

pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of 9 VAC 5-80-10 when used or stored at ambient temperatures); and any operation specified below:

- a. Bulk terminals – gasoline bulk loading operations.

Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

- b. Gasoline dispensing facilities.

Any gasoline dispensing facility.

- c. Bulk plants – gasoline bulk loading operations.

(1) Any facility with an expected daily throughput of less than 4,000 gallons.

(2) Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

- d. Account/tank trucks.

No permit is required for account/tank trucks, but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

- e. Petroleum liquid storage operations.

(1) Any tank of 40,000 gallons or less storage capacity.

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.

(3) Any tank storing waxy, heavy pour crude oil.

16. Dry cleaning plants.

Any petroleum dry cleaning plant with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.

17. Wood product manufacturing plants.

Any addition of, relocation of or change to a woodworking machine within a plant provided the system air movement capacity, expressed as the cubic feet per minute of air, and maximum control efficiency of the control system are not decreased.

18. Wood sawmills.

Any wood sawmill.

C. New sources with no exemptions.

Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.

1. Petroleum refineries.
2. Asphalt plants.
3. Chemical fertilizer manufacturing plants.
4. Kraft pulp mills.
5. Sand and gravel processing facilities.
6. Coal preparation plants.
7. Stone quarrying and processing facilities.
8. Portland cement plants.
9. Wood product manufacturing plants.
10. Secondary metal operations.
11. Lightweight aggregate process operations.
12. Feed manufacturing plants.
13. Incinerators.
14. Coke ovens.
15. Sulfuric acid production units.
16. Sulfur recovery operations.

17. Primary metal operations.
18. Nitric acid production units.
19. Concrete batching plants.
20. Pharmaceutical products manufacturing plants.
21. Rubber tire manufacturing plants.

D. New source exemption levels by emission rate.

Facilities not covered by subsection B or C of this section with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation.

EMISSION RATES.

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 40 tons per year.

Sulfur dioxide - 40 tons per year.

Particulate matter (PM₁₀) - 15 tons per year.

Volatile organic compounds - 25 tons per year.

Lead - 0.6 ton per year.

E. Modified source exemption levels by emission rate.

Facilities with increases in uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification.

EMISSION RATES.

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 10 tons per year.

Sulfur dioxide - 10 tons per year.

Particulate matter (PM₁₀) - 10 tons per year.

Volatile organic compounds - 10 tons per year.

Lead - 0.6 ton per year.

F. New source performance standards and national emission standards for hazardous air pollutants.

Regardless of the provisions of subsections B, D and E of this section, affected facilities subject to Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or subject to Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60 shall not be exempt from the provisions of 9 VAC 5-80-10, with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

G. Relocation of portable facilities.

Regardless of the provisions of subsections B, C, D, E and F of this section, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under this chapter provided that:

1. The emissions of the unit at the new location would be temporary;
2. The emissions from the unit would not exceed its allowable emissions;
3. The unit would not undergo modification or reconstruction;
4. The unit is suitable to the area in which it is to be located; and
5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

H. Requirements for exempted facilities.

Any facility exempted from the provisions of 9 VAC 5-80-10 by subsection B of this section shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.

I. Exemption levels for toxic pollutants.

1. Facilities with an increase in the uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption

formulas for the applicable TLV® in subdivision I 4 of this section shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification, provided the increase in the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

2. Facilities with an uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in subdivision I 4 of this section shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation, provided the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

3. If more than one exemption formula applies to a toxic pollutant emitted by a facility, the uncontrolled emission rate of that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV® has been established.

4. Exemption formulas.

a. For toxic pollutants with a TLV-C®, the following exemption formula applies:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-C}^{\circ} (\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL® and a TLV-TWA®, the following exemption formulas apply:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-STEL}^{\circ} (\text{mg/m}^3) \times 0.033$$

Exempt Emission Rate (tons per year) =

$$\text{TLV-TWA}^{\circ} (\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA®, the following exemption formulas apply:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-TWA}^{\circ} (\text{mg/m}^3) \times 0.066$$

Exempt Emission Rate (tons per year) =

$$\text{TLV-TWA}^{\circ} (\text{mg}/\text{m}^3) \times 0.145$$

5. Exemption from the requirements of 9 VAC 5-80-10 for any facility which has an uncontrolled emission rate of any toxic pollutant without a TLV[®] shall be determined by the board using available health effects information.

6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.

7. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to modification, construction, reconstruction or relocation.

a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

b. Ethylene oxide sterilizers.

c. Boilers or industrial furnaces burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient.

For the purposes of this subdivision, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subdivision shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.).

HISTORICAL NOTES:

Derived from: Part VIII of VR 120-01 (§ 120-08-01)

Effective Date: March 17, 1972

Promulgated: March 17, 1972

Amended: August 11, 1972

Amended: February 3, 1974

Amended: December 20, 1974

Amended: August 9, 1975
Amended: December 10, 1976
Amended: September 30, 1977
Amended: October 6, 1978
Amended: January 30, 1979
Amended: August 3, 1979
Amended: October 5, 1979
Amended: November 30, 1979
Amended: February 8, 1980
Amended: April 3, 1981
Amended: July 31, 1981
Amended: July 1, 1982
Amended: March 1, 1983
Amended: January 1, 1985
Amended: October 1, 1986
Amended: January 1, 1993
Amended: July 1, 1997

I:\OPD\REG\VAC\800